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Decision 02-11-026 November 7, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (E 3338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038 (Filed November 16, 2000)
Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan. (U 39 E)	Application 00-11-056 (Filed November 22, 2000)
Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.	Application 00-10-028 (Filed October 17, 2000)
William Ahern, Janet Beautz (for Santa Cruz County Board of Supervisors), Charlie Betcher, Robert J. Boileau, William Burns, Alvin Colley, James Crettol, Michael Gallo, Dave Hennessy, Dennis Herrera, Nettie Hoge, Walter Johnson, Fred Keeley, Reggie Knox, William Knox, Bruce Livingston, Elizabeth Martin, Barbara McIver, Robert Meacher, Deidra O'Merde, Elizabeth Sholes, Mary Frances Smith, Ladan Sobhani, Peter Van Zant, Mary Ann Woomer, and Carl Zichella, Complainants, vs. Pacific Gas and Electric Company, Defendant.	Case 02-02-027 (Filed February 27, 2002)

Rehearing on
End of Rate Freeze

**INTERIM OPINION MODIFYING DECISION 01-03-082
TO CHANGE RESTRICTION ON USE OF SURCHARGE REVENUES**

1. Summary

Decision (D.) 01-03-082 makes permanent a $0.01 per kilowatt-hour (kWh) surcharge, and adds a $0.03/kWh surcharge (for a total surcharge of $0.04/kWh), but restricts application of total surcharge revenues to ongoing procurement costs and future power purchases. This decision modifies D.01-03-082 to change the restriction on application of total surcharge revenues. As modified, total surcharge revenues may be applied to future power purchases and returning each utility to financial health. (See Attachment A.) The proceeding remains open.

2. Background

In 1996, the California Legislature enacted Assembly Bill (AB) 1890. AB 1890 sought to create a competitive generation market in California for the purpose of eventually reducing electricity rates. To accomplish this, AB 1890 froze electric rates beginning in 1998 at levels that were in place on June 10, 1996 (with some exceptions) until certain events occurred, or until March 31, 2002, whichever resulted first. The frozen rates were higher than the utilities' then current costs to provide utilities an opportunity to recover some or all costs defined as transition costs during the transition to a competitive market. The generation market became exceptionally dysfunctional, however, and generation prices escalated to unexpectedly high levels.

Because of the extremely expensive wholesale electricity prices and the legislatively mandated rate freeze, Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) faced serious financial distress

in 2000 and 2001.[1] This distress jeopardized system reliability, the State's economy, and the welfare of the State's citizens. The Commission addressed the crisis by implementing surcharges totaling $0.04/kWh, but restricted application of surcharge revenues to "ongoing procurement costs" and "future power purchases." (D.01-01-018, Ordering Paragraph 2, and D.01-03-082, Ordering Paragraph 2, respectively.) Funds not spent for these purposes were subject to refund.

The $0.03/kWh surcharge adopted in March 2001 was implemented through rates that became effective in June 2001. (D.01-05-064.) D.01-05-064 required that PG&E and SCE amortize over a 12-month period the revenue associated with applying the $0.03/kWh surcharge from the effective date of D.01-03-082 to the beginning of June 2001. This increased the surcharge by approximately $0.005/kWh system-wide for each utility.

By Resolution E-3776 dated June 6, 2002, the Commission required that the $0.005/kWh component of the rates established in D.01-05-064 remain in effect after the 12-month amortization period, and ordered that PG&E and SCE track the revenues associated with this component for later disposition and allocation. The total surcharge revenues described in this decision also include revenues from this component of rates.

Parties were notified of possible modification to D.01-01-018 and D.01-03-082 by Ruling dated July 1, 2002. The Ruling stated that one possible approach would be removing the restriction on use of surcharge revenues for the

[1] San Diego Gas and Electric Company (SDG&E) did not face the same type of financial distress since the legislatively mandated rate freeze for SDG&E had already ended.

purpose of returning PG&E and SCE to financial health. Parties were given an opportunity to comment and move for hearing. (Pub. Util. Code § 1708.)

Timely comments were filed and served by PG&E, SCE, California Industrial Users (CIU), California Manufacturers & Technology Association (CMTA), California Retailers Association, California Farm Bureau Federation (Farm Bureau), The Utility Reform Network (TURN), Consumers Union, Aglet Consumer Alliance, and the California Department of Water Resources (DWR). Utilities generally support the modification, and others generally oppose, or suggest conditions. Timely reply comments were filed and served by PG&E, SCE, CIU, Farm Bureau and TURN.

CIU moved for evidentiary hearing, and the California Large Energy Consumers Association responded in support of CIU's motion. The motion was denied. (Ruling dated September 23, 2002.) We affirm the Ruling denying the motion for hearing.

3. Discussion

We restricted use of surcharge revenues as a matter of policy, not as a requirement of law. Opponents of changing the restriction argue that doing so would be both bad policy and unlawful. We disagree, and are persuaded that we must change the restriction on the use of surcharge revenues so that they might be used, if necessary as authorized by the Commission, to also return each utility to reasonable financial health. Reasonable financial health is necessary so that each utility may serve reliable, safe and adequate electricity at just and reasonable rates.

3.1 Policy and Legal Considerations, and the Utilities' Obligation to Serve

3.1.1. Financial Distress

We adopted surcharges in early 2001 totaling $0.04/kWh to provide cash flow, facilitate access to capital markets, and prevent a financial collapse. In particular, we adopted the initial $0.01/kWh surcharge to address "serious financial distress [involving] cash flow and short-term access to capital markets…" (D.01-01-018, mimeo., page 14.) We noted that we "have a duty to assure that the utilities are able to continue to procure and deliver power for their customers," and we took action "to ensure that reliable, safe and adequate service is provided to all Californians at just and reasonable rates." (D.01-01-018, mimeo., page 9.)

We adopted the additional $0.03/kWh surcharge after learning that PG&E had exhausted its borrowing capability and was on the verge of default, with a cash balance of $2.5 billion but obligations of $3.3 billion as of March 8, 2001. (D.01-03-082, Findings of Fact 14 and 16, mimeo., pages 42-3.) We also learned that SCE had exercised all available lines of credit and had been unable to extend or renew credit, with a cash balance of $1.6 billion but $1.8 billion in default as of March 8, 2001. (D.01-03-082, Findings of Fact 17 and 19, mimeo., page 43.) We found that "[a]dditional ratepayer money must be provided . . . to prevent utility financial collapse." (D.01-03-082, Finding of Fact 23, mimeo., page 44.) We did this to fulfill our duty to assure that utilities are able to continue to procure and deliver reliable, safe and adequate electricity to their customers.

We observed that this duty derives, *inter alia*, from Public Utilities Code §§ 451, 728, and 761.[2] (D.01-01-018, mimeo., page 9.) Moreover, we found that fulfilling this duty by ordering rate increases above the frozen rate levels specified in AB 1890 was consistent with the Legislature's intent, as stated in AB 1890—in particular §§ 330(g) and 391(a)—which provides, in relevant part:

> "Reliable electric service is of utmost importance to the safety, health, and welfare of the state's citizenry and economy." (§ 330(g).)
>
> "Electricity is essential to the health, safety, and economic well-being of all California consumers." (§ 391(a).)

We reiterated that adding surcharges did not conflict with the AB 1890 rate freeze, concluding as a matter of law that "[n]othing in AB 1890 provides that if, for unforeseen reasons, in response to additional legislation, the Commission increased rates to prevent the collapse of the electric system, all limits on utility rates are ended." (D.01-03-082, Conclusion of Law 10, mimeo., page 52).

We limited use of surcharge revenues to the unanticipated but urgent, identified needs: ongoing procurement costs and future power purchases. The precise amount of money that was necessary was not known. Therefore, it was also reasonable to track the money in an account subject to refund should it later be determined that the money was unnecessary.

Further, we concluded that we were not prepared to find that the rate control period had ended. (D.01-03-082, Conclusion of Law 6, mimeo.,

[2] Unless otherwise specified, all statutory references are to the Public Utilities Code.

page 52.) We ordered a change in the accounting of costs and revenues over the entire rate freeze period to more properly implement the intentions of the rate freeze. We found it just and reasonable, and consistent with law, to implement a rate increase on top of frozen rates. Given that we had not yet determined whether the rate freeze was over, however, it was reasonable policy at that time to treat surcharge revenues separately from rates and revenues under the rate freeze to minimize confusion over the sources and uses of funds, and allow for later adjustment of the results, if necessary.

3.1.2. Continuing Financial Distress

Unfortunately, the unanticipated financial distress that required extra-ordinary action in early 2001 continues in 2002. Then, the distress was cash flow. Now, the distress is utility financial health such that each utility is reasonably able to procure and provide reliable, safe and adequate electricity to its customers at just and reasonable rates.

On January 17, 2001, Governor Gray Davis proclaimed a State of Emergency. This proclamation was based on electricity shortages resulting in blackouts for millions of Californians, and dramatic increases in electricity prices threatening the solvency of California's major public utilities. The State of Emergency continues.

The continuing financial distress is reflected in the fact, for example, that the emergency in the electricity market continues. It is also reflected in PG&E's April 2001 bankruptcy. The Commission's proposed First Amended Plan of Reorganization (POR) for PG&E (jointly sponsored by the Official Committee of Unsecured Creditors and the Commission), and the Commission's October 2, 2001 settlement with SCE, are each intended to assist the respective

utility return to reasonable financial health.[3] In each case, this may require use of some or all of the surcharge revenues.[4]

Subsequent proceedings will determine, as necessary, what needs require use of surcharge revenues, if any; whether there is any cost or other basis to support specific surcharge levels; and whether the resulting rates are just and reasonable. For example, in this rehearing on the end of the rate freeze, the Commission will determine "whether rate controls [i.e., rate freeze] under AB 1890 should be ended." (D.02-01-001, Ordering Paragraph 2.) The Commission will then "determine the extent and disposition of stranded costs left unrecovered, and will address this in proceedings subsequent to our determinations regarding the rate freeze." (D.02-01-001, mimeo., page 25.) These subsequent proceedings will include evidentiary hearing, if necessary, to consider disposition of stranded costs and whether the resulting rates are just and reasonable. The result may be, for example, to continue the $0.04/kWh surcharge for a specific, limited period of time to provide for necessary stranded or other cost recovery, thereby assisting each utility's return to reasonable financial health. Similarly, in Investigation (I.) 02-04-026 we will consider

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[3] The Commission's settlement with SCE resolves a lawsuit in which SCE sought recovery of what SCE alleged were unrecovered power procurement costs. (See *Southern California Edison Co. v. Lynch,* United States District Court, Central District of California, Case No. CV 00-12056-RSWL (Mcx).)

[4] This will be determined in other proceedings. For example, Resolution E-3765 implements a ratemaking structure consistent with the October 2, 2001 Settlement Agreement between SCE and the Commission. The Settlement Agreement uses current rates, including the $0.04/kWh surcharge, to pay costs recorded in a Procurement Related Obligations Account (PROACT). An application for rehearing of Resolution E-3765 has been filed, and Commission action is pending. (Application 02-02-024.)

whether or not the Commission's POR for PG&E results in just and reasonable rates.

Nothing about AB 1890, and its implementation through D.01-03-082, requires that surcharge revenues be limited to paying future power procurement costs. Rather, we adopted surcharges in early 2001 while rate controls under AB 1890 remained in effect based on our authority and duty under the Public Utilities Code to enable utilities to procure and deliver reliable, safe and adequate electricity at just and reasonable rates. The surcharges were independent of AB 1890 rate controls, and were necessary to address unanticipated events and financial distress. The continuing financial distress requires that the Commission now change the restriction on use of surcharge revenues in order to provide adequate means for the Commission to ensure that each utility is able to procure and deliver electricity to its customers. (D.01-01-018, Conclusion of Law 1, mimeo., page 22.) The Commission's first duty consistent with law is to assure that customers of California public utilities receive reliable, safe service at reasonable rates. (D.01-03-082, Conclusion of Law 2, mimeo., page 51.) No reason stated in the original version of D.01-03-082 justifies or necessitates continuing the restriction, given continuing financial distress.

CIU, CMTA, TURN and others argue that the surcharges have seriously harmed ratepayers and the California economy. They state that continuation of the surcharges reflects a callous indifference to this severe harm, and recommend a seemingly simple solution: retain the existing restriction on use of surcharge revenues, refund revenues not used for procurement and power purchases, and promptly reduce rates.

If these were normal times, the Commission would do just that. Unfortunately, these are not normal times. The enormity of the problems created by the unprecedented energy crisis in 2000 and 2001, and their ongoing nature, require that the Commission continue to take extraordinary action.

While authorizing refunds and reducing rates might appear to benefit ratepayers, ratepayers and the economy are actually harmed when utilities are unable to procure and deliver reliable, safe and adequate electricity. No party presents a convincing argument that financially ill utilities are able to fulfill these public utility responsibilities and obligations.

Our duty is to establish just and reasonable rates that permit utilities to fulfill their public utility obligation. The rate level must balance competing objectives: the desire of ratepayers for rates that are as low as possible against the need for rate levels to be set so that utilities can procure and deliver reliable, safe and adequate electricity without financial infirmity.

Current circumstances prevent implementing simple solutions. While we could adopt parties' recommendation to immediately order refunds and rate decreases, this action would then require a rate increase for the purpose of returning each utility to financial health.[5] We decline to take a contradictory action that results in rate instability and uncertainty.

As a result, we change the limitation on the use of surcharge revenues. The Farm Bureau and others point out, however, that this change should not be open-ended and undefined. We agree, and do not permit use of

[5] For example, the Commission's POR for PG&E and settlement with SCE each use some or all of the surcharge revenues and rates that parties recommend be returned to ratepayers.

surcharge revenues for any of dozens of what might otherwise be found to be meritorious uses. Rather, we continue the limitation on the use of surcharge revenue to pay for future power purchases and add returning each utility to reasonable financial health.

3.2 The Restriction on the Use of the Surcharge Is Not Statutorily Required

In any event, and regardless of the utilities' current financial condition, AB 1890 does not require that we leave the restriction in place for a second reason. The provisions of AB 1890 to which the commenters advert as requiring the surcharge restriction are no longer viable in the wake of more recent legislation.

In pertinent part, AB 1890, as interpreted by the Commission prior to January 2001, provided that transition and procurement costs incurred by the electric utilities during the transition period could not be recovered after the rate freeze, which was to end by March 31, 2002 at the latest. (§ 368.) As briefly described above, the purpose underlying the AB 1890 scheme was to transition to entirely competitive generation and lower retail rates expeditiously, while allowing the utilities an opportunity to recoup costs they might be unable to recover in a competitive generation market ("transition costs" or "stranded costs"). (§ 330 (l), (t), (v).) In large part, the AB 1890 paradigm was based on the assumption that California's generation market would be fully competitive by 2002.

Recognizing that the benefits of deregulation were not materializing, the California Legislature called a halt to the transition to competitive generation

in January 2001, by enacting ABX1-6.[6] Although AB 1890 provided that the utilities' generation assets would be subject to the Commission's rate regulation until those assets underwent market valuation (one method of which would be a sale of the assets), ABX1-6 deleted the market valuation requirement and requires the utilities to retain those generation assets subject to traditional Commission rate regulation until 2006 at the earliest. (§ 377.)

More specifically, ABX1-6 deleted in its entirety former subsection (h), which read as follows:

> Generation assets owned by any public utility prior to January 1, 1997, and subject to rate regulation by the commission, shall continue to be subject to regulation by the commission until those assets have undergone market valuation in accordance with procedures established by the commission. (Emphasis added.)

Similarly, ABX1-6 deleted from § 330(l)(2) the following language:

> and utility generation should be transitioned from regulated status to unregulated status through means of commission-approved market valuation mechanisms. (Emphasis added.)

Finally, ABX1-6 also modified § 377. Prior to amendment by ABX1-6, the section read:

> The commission shall continue to regulate the nonnuclear generating assets owned by any public utility prior to January 1, 1997, that are subject to commission regulation until those assets have been subject to market valuation in accordance with procedures established by the commission. If, after market valuation, the public utility wishes to retain ownership of nonnuclear generation assets in the same

[6] First Extraordinary Special Session, Bill No. 6.

> corporation as the distribution utility, the public utility shall demonstrate to the satisfaction of the commission, through a public hearing, that it would be consistent with the public interest and would not confer undue competitive advantage on the public utility to retain that ownership in the same corporation as the distribution utility. (Emphasis added.)

As amended by ABX1-6 the section now reads:

> The commission shall continue to regulate the facilities for the generation of electricity owned by any public utility prior to January 1, 1997, that are subject to commission regulation until the owner of those facilities has applied to the commission to dispose of those facilities and has been authorized by the commission under Section 851 to undertake that disposal. Notwithstanding any other provision of law, no facility for the generation of electricity owned by a public utility may be disposed of prior to January 1, 2006. The commission shall ensure that public utility generation assets remain dedicated to service for the benefit of California ratepayers.

These provisions of ABX1-6 clearly and expressly confer on the Commission jurisdiction over regulation of the utilities' retained generation assets, including rates. Such jurisdiction includes, for example, authority to determine whether and to what extent the utilities may recover in rates their investments in these retained generation assets. Moreover, by conferring upon the Commission the authority to continue to regulate the utilities' retained generation under a cost-of-service approach, and deleting provisions requiring generation to be transitioned from regulated to unregulated status, these provisions removed any danger that the investment in such assets "may become uneconomic as a result of a competitive generation market."[7] (§ 367.) In other words, the investment in these assets no longer is a stranded or transition cost within the meaning of AB 1890. Thus, recovery of these investments is no longer barred by AB 1890's prohibition on the recovery of stranded costs after the end of

[7] Under cost-of-service ratemaking, the concept of "uneconomic" costs is not applicable. The concept only has relevance under a market-based rate regime.

the rate freeze.[8] Accordingly, now that the rate freeze is over,[9] our authority to authorize the utilities to use surcharge revenues is not limited to use for prospective power procurement costs only.

Many of the commenters mischaracterize Commission statements in D.01-03-082 as a declaration that ABX1-6 did not affect stranded cost recovery, the end of the rate freeze, or alter the AB 1890 paradigm. All the Commission stated was that the rate freeze provisions were to remain in effect at the time of that decision (March 2001). The Commission came to no conclusions about what impact ABX1-6 ultimately would have on the AB 1890 provisions.

4. Conclusion

There is no statutory requirement that surcharge revenues be limited to paying the cost of ongoing procurement and future power purchases. Rather, the Commission imposed this restriction, and the Commission may reconsider its reasonableness.

We have broad authority, consistent with AB 1890, to authorize surcharges, or other rate increases, when a utility is faced with unanticipated financial difficulties that impair its ability to fulfill its obligation to serve. In addition, and apart from this authority to address unanticipated circumstances,

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[8] Although we believe that ABX1-6 and AB 1890 can be harmonized in this manner, to the extent that they cannot, ABX1-6 as the later-enacted statute, implicitly repealed those provision of AB 1890 that are incompatible with it. (Peatros v. Bank of America (2000) 22 Cal.4th 147, 167-68; In re Thierry S. (1977) 19 Cal.3d 727,744.)

[9] Exactly when the freeze ended (e.g., January 18, 2001 with ABX1-6, February 1, 2001 with ABX1-1, or March 31, 2002) will be determined in other proceedings in connection with this rehearing. There is no question, however, that the freeze ended no later than March 31, 2002. (§ 368(a).)

ABX1-6 expressly repealed certain provisions of AB 1890, and restored traditional Commission jurisdiction to regulate utilities' retained generation, including rates. ABX1-6 thus provides an independent basis for concluding that AB 1890 does not restrict use of the surcharge revenues to future power procurement costs only.

Accordingly, we modify D.01-03-082 as provided in Attachment A. The changes include modifying the restriction on use of surcharge revenues applied to the $0.01/kWh surcharge adopted in D.01-01-018. That is, surcharge revenues collected on or after the effective date of D.01-01-018 are no longer limited to paying ongoing procurement costs, but are to be applied to future power purchases or returning each utility to reasonable financial health. While the July 1, 2002 Ruling raised the possibility that D.01-01-018 might need modification, no modification is required of D.01-01-018 given the changes we make to D.01-03-082.

Today's decision, however, only modifies the restriction on use of surcharge revenues. Parties raise the issue of how the revenues might specifically be spent. We do not decide that here. Rather, the extent to which the utilities use surcharge revenues for future power purchase costs or obtaining reasonable financial health, and the amounts necessary to accomplish those goals, are the subject of other pending proceedings. The utilities, therefore, shall continue tracking surcharge revenues in the authorized balancing accounts, since they remain subject to later adjustment and possible refund as will be determined later.

5. Comments on Draft Decision

On September 23, 2002, the draft decision of Assigned Commissioner Lynch was filed and served on parties in accordance with Public Utilities Code

Section 311(g)(1) and Rule 77.7 of the Commission's Rules of Practice and Procedure. Comments were filed and served on October 15, 2002, by PG&E, CIU, Farm Bureau, and TURN. Reply comments were filed and served on October 21, 2002 by PG&E and CMTA.

In their comments, TURN and PG&E make contrary claims as to whether the surcharge revenues authorized by D.01-01-018 and D.01-03-082 were to be applied first to recover all ongoing power costs before using any revenues under the AB 1890 frozen rate levels for power costs or whether our decisions had required PG&E and SCE to first utilize revenues under AB 1890 for the recovery of all operating costs, including ongoing power costs, and thereafter to utilize surcharge revenues for any additional ongoing power costs, which were not recovered by AB 1890 frozen rate levels. The Commission, therefore, clarifies that D.01-01-018 and D.01-03-082 had authorized the surcharges to supplement the AB 1890 frozen rates, because they were not high enough to pay for ongoing power costs. In no part of these decisions did we state that AB 1890 frozen rate revenues should no longer be applied first to recover operating costs, including ongoing power costs. In D.01-03-082, Conclusion of Law 9 we specifically referred to the "electricity market conditions and utility financial distress that AB 1890 neither anticipated nor provided for." Obviously, AB 1890 had provided for a certain level of power costs in its frozen rate levels. Moreover, the Commission had conditionally approved the rate increases in these surcharges, so that the extra revenues could only be used for ongoing power purchases, and the rate increases in the surcharges were subject to refund if the surcharges (on top of the AB 1890 frozen rates) were higher than necessary to recover all of the utilities' ongoing operating costs.

In the present decision, we now change the condition on the use of these surcharge revenues, subject to other proceedings to determine what are the just and reasonable rates for PG&E and SCE. There would not have been any reason to change this condition to address the financial distress of the utilities if they were fully entitled to keep all of the surcharge revenues under D.01-01-018 and D.01-03-082, as PG&E has erroneously urged in its comments.

6. Assignment of Proceeding

D.02-01-001 granted limited rehearing of D.01-03-082 "on the issue of whether rate controls under AB 1890 should be ended." (D.02-01-001, Ordering Paragraph 2.) Loretta Lynch is the Assigned Commissioner and Burton W. Mattson is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. By Ruling dated July 1, 2002, parties were provided notice and opportunity to comment on possible modifications to D.01-01-018 and D.01-03-082.

2. On April 14, 2001, PG&E filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of California for the purpose of returning to financial health.

3. In connection with PG&E's bankruptcy proceeding, the Commission has filed jointly with the Official Committee of Unsecured Creditors the First Amended POR for PG&E, which, if confirmed by the Bankruptcy Court, is intended to help PG&E return to financial health.

4. On October 2, 2001, the Commission and SCE entered into a settlement of *Southern California Edison Company v. Lynch*, No. CV-00-12056 (C.D. Cal.) with the intention, in part, of helping SCE return to financial health.

5. It may be necessary to use some or all of the surcharge revenues as part of the Commission's First Amended POR for PG&E and the Commission's

Settlement with SCE to return each utility to reasonable financial health, so that each utility has a reasonable opportunity to procure and deliver reliable, safe and adequate electricity.

Conclusions of Law

1. Pursuant to Public Utilities Code §§ 451, 728, and 761, the Commission has a duty to ensure that public utilities are able to procure and deliver power to their customers, and to ensure that they provide reliable, safe and adequate service.

2. The Commission's authority to impose surcharges or otherwise increase rates above the levels set by AB 1890 derives from §§ 451 and 728, and is consistent with the intent of the legislature as expressed in AB 1890, and specifically in §§ 330(g) and 391(a).

3. AB 1890 does not restrict the Commission's authority to impose surcharges or otherwise increase rates above the levels set by AB 1890, when doing so is necessary to respond to unanticipated circumstances.

4. ABX1-6 modified AB 1890 by requiring the utilities to retain their generation assets until at least 2006, and subjecting those assets to traditional Commission rate regulation until at least that time.

5. ABX1-6 modified AB 1890 by restoring to the Commission authority to fully regulate – including rate regulation – the utilities' retained generation assets. This authority includes authority to provide for the recovery in rates of the utilities' investments in those assets.

6. Nothing in AB 1890, modified by ABX1-6 as described above, prohibits the Commission from authorizing the utilities to utilize revenues derived from the surcharges imposed in D.01-01-018 and D.01-03-082 for purposes other than prospective power procurement costs.

7. The restriction of using surcharge revenues only for prospective power procurement costs that is imposed by D.01-03-082 is not statutorily required.

8. The restriction on the use of surcharge revenues in D.01-03-082 should be modified to also permit surcharge revenues to also be used to return each utility to reasonable financial health.

9. PG&E and SCE should continue to track surcharge revenues in a balancing account for later potential disposition.

10. This order should be effective today in order to better enable the return of PG&E and SCE to reasonable financial health.

INTERIM ORDER

IT IS ORDERED that:

1. Decision (D.) 01-03-082 is modified as shown in Attachment A. All other language in D.01-03-082 shall be read and understood to conform to these modifications.

2. The rehearing of D.01-03-082 ordered by D.02-01-001 remains open.

This order is effective today.

Dated November 7, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners

ATTACHMENT A
Page 1

MODIFIED LANGUAGE IN DECISION 01-03-082

The following language in Decision 01-03-082 is modified:

1. At mimeo., page 2 (first sentence in the second full paragraph):

   Original language:

   "After an independent accounting review, an evidentiary hearing and a full opportunity to comment and testify provided to all parties, we conclude that the utilities have established the need for additional revenues on a going-forward basis in order for those utilities to comply with their statutory duty to provide adequate electric service to their customers."

   Replaced with:

   "After an independent accounting review, an evidentiary hearing and a full opportunity to comment and testify provided to all parties, we conclude that the utilities have established the need for additional revenues in order for those utilities to comply with their statutory duty to provide adequate electric service to their customers."

2. At mimeo., pages 15-16 (fifth full paragraph):

   Original language:

   "We also grant an increase of three cents per kWh to be collected by SCE and PG&E, subject to several conditions. Revenue generated by the rate increases will be applied only to electric power costs that are incurred after the effective date of this order. We will direct the utilities to enter the revenues from the rate increases into balancing accounts and the revenues will be subject to refund if, at a later date, we determine that the utilities failed to use the funds to pay for future power purchases. We reiterate that the revenues the utilities have collected and continue to collect from the one-cent per

kilowatt-hour rate increase authorized on January 4, 2001 must be used to pay for power purchases and not for any other costs incurred by the utilities. Upon receipt of and analysis and comment on DWR's revenue requirement, which has yet to be provided to this Commission, we will act promptly to further allocate a portion of these increases to CDWR."

Replaced with:

"We also grant an increase of three cents per kWh to be collected by SCE and PG&E, subject to several conditions. Revenue generated by the rate increases may be applied to costs as necessary to assure continued viability of California's electric power supply, safeguard the viability of the State's General Fund, minimize credit-related supply disruptions, pay electric power costs incurred after the effective date of this order, and other purposes authorized by the Commission as needed for securing the reasonable financial health of SCE and PG&E. We clarify that the revenues the utilities have collected and continue to collect from the one-cent per kilowatt-hour rate increase authorized on January 4, 2001 must be used for these purposes. We will direct the utilities to enter the revenues from the rate increases into balancing accounts and the revenues will be subject to refund if, at a later date, we determine that such revenues were not spent for these purposes and refunds should be made. Upon receipt of and analysis and comment on DWR's revenue requirement, which has yet to be provided to this Commission, we will act promptly to further allocate a portion of these increases to CDWR."

3. At mimeo., page 17 (second sentence in the first full paragraph):

   Original language:

   "First, to the extent that generators and sellers make refunds for overcollections, those refunds should either be passed through ratepayers or applied to unrecovered power purchase costs, as we discuss more fully below."

ATTACHMENT A
Page 3

Replaced with:

"First, to the extent that generators and sellers make refunds for overcollections, those refunds should either be passed through ratepayers or applied to other purposes described herein as authorized by the Commission."

4. At mimeo., page 21 (fifth sentence in the second full paragraph):

Original language:

"For example, as we stated early in this decision, to the extent that generators and sellers make refunds for overcharges, those refunds should either be passed on to ratepayers or applied to capital cost recovery."

Replaced with:

"For example, as we stated early in this decision, to the extent that generators and sellers make refunds for overcharges, those refunds should either be passed on to ratepayers or applied to other purposes described herein, including, but not limited to, capital cost recovery, as authorized by the Commission."

5. Findings of Fact 32 and 33, at mimeo., page 45:

Original Language:

"32. Revenue generated by the rate increases will be applied only to electric power costs that are incurred after the effective date of this order. The revenues will be subject to refund if, at a later date, we determine that the utilities failed to use the funds to pay for future power purchases."

"33. The revenues the utilities have collected and continue to collect from the one-cent per kilowatt-hour rate increase authorized

on January 4, 2001 must be used to pay for power purchases and not for any other costs incurred by the utilities."
Replace with:

"32. Revenue generated by the rate increases will be subject to refund if, at a later date, we determine that the utilities failed to use the funds to pay for future power purchases or securing reasonable financial health."

"33. The revenues the utilities have collected and continue to collect from the one-cent per kilowatt-hour rate increase authorized on January 4, 2001 must be used to pay for power purchases and securing reasonable financial health."

6. Finding of Fact 39 at mimeo., page 46:

Original language:

"39. To the extent that generators and sellers make refunds for overcollections, those refunds should either be passed through ratepayers or applied to unrecovered power purchase costs."

Replaced with:

"39. To the extent that generators and sellers make refunds for overcollections, those refunds should either be passed through ratepayers or applied to other purposes as authorized by the Commission to assure the continued viability of California's electric power supply, safeguard the viability of the State's General Fund, minimize credit-related supply disruptions, pay future electric power costs, and secure reasonable financial health as necessary for PG&E and SCE."

7. Conclusion of Law 13 at mimeo., page 53:

Original language:

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"13. It is reasonable that revenue generated by the rate increases will apply only to power costs that are incurred after the effective date of this order."

Replace with:

"13. It is reasonable that revenue generated by the rate increases will apply only to future power costs and securing reasonable financial health."

8. Conclusion of Law 14 at mimeo., page 53:

Original language:

"14. It is reasonable to direct the utilities to enter the revenues from the rate increases into balancing accounts and the revenues will be subject to refund if at a later date we determine that the utilities failed to use the funds to pay for future power purchases."

Replaced with:

"14. It is reasonable to direct the utilities to enter the revenues from the rate increases into balancing accounts and the revenues will be subject to refund if at a later date we determine that such refunds should be made."

9. Conclusion of Law 17 at mimeo., page 53:

Original language:

"17. To the extent that generators and sellers make refunds for overcharges, it is reasonable to require that those refunds should either be passed onto ratepayers or potentially could be applied to stranded costs."

Replaced with:

"17. To the extent that generators and sellers make refunds for overcharges, it is reasonable to require that those refunds should either be passed on to ratepayers or potentially could be applied to other purposes as authorized by the Commission for future power purchase costs or to return each utility to reasonable financial health."

10. Ordering Paragraph 1 at mimeo., page 56:

Original language:

"1. Pacific Gas & Electric Company's (PG&E) and Southern California Edison Company's (Edison) request for rate relief is granted to the extent set forth herein. The rate surcharge of three-cents per kilowatt-hour (kWh) shall be applied to power costs incurred after the effective date of this decision. The three-cents per kWh shall be added to generation-related rates for PG&E and Edison that are adopted in Ordering Paragraph 1 of our companion decision in this docket only for the purpose of all calculations required by that decision dealing with the transfer of funds to CDWR. (D.01-03-081.) PG&E and Edison shall provide revenues from the generation-related rates and the three-cent surcharge to the DWR immediately, consistent with D.0l-03-081."

Replaced with:

"1. Pacific Gas & Electric Company's (PG&E) and Southern California Edison Company's (Edison) request for rate relief is granted to the extent set forth herein. The rate surcharge of three-cents per kilowatt-hour (kWh) shall be applied to power costs incurred after the effective date of this decision, or other purposes as authorized by the Commission where needed to return each utility to reasonable financial health. The rate surcharge of three-cents per kilowatt-hour (kWh) shall be added to generation-related rates for PG&E and Edison that are adopted in Ordering Paragraph 1 of our companion decision in this docket only for the purpose of all calculations required by that decision dealing with the transfer of

funds to CDWR. (D.01-03-081.) PG&E and Edison shall provide revenues from the generation-related rates and the three-cent surcharge to the DWR immediately, consistent with D.0l-03-081."

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11. Ordering Paragraph 2 at mimeo., page 536

Original language:

"2. PG&E and Edison shall enter the revenues from the rate increases into balancing accounts and the revenues shall be subject to refund if, at a later date, we determine that the utilities failed to use the funds to pay for future power purchases. The revenues the utilities have collected and continue to collect from the one-cent per kilowatt-hour rate increase authorized on January 4, 2001 shall be used to pay for power purchases and not for any other costs incurred by the utilities. Within five days after the effective date of this decision, PG&E and Edison shall file advice letters to establish these balancing accounts, which will be effective upon approval by the Energy Division."

Replaced with:

"2. PG&E and Edison shall enter the revenues from the rate increases into balancing accounts and the revenues shall be subject to refund if, at a later date, we determine that the utilities failed to use the funds to pay for future power purchases or for the purpose of securing reasonable financial health, as the Commission determines reasonable and necessary in future proceedings. The revenues the utilities have collected and continue to collect from the one-cent per kilowatt-hour rate increase authorized on January 4, 2001 shall be entered into the balancing accounts for the purposes of paying the costs of future power purchases or securing reasonable financial health. Within five days after the effective date of this decision, PG&E and Edison shall file advice letters to establish these accounts, which will be effective upon approval by the Energy Division."

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12. Ordering Paragraph 4 at mimeo., page 57:

Original language:

"4. To the extent that generators and sellers make refunds for overcollections, those refunds shall either be passed through ratepayers or applied to unrecovered power purchase costs. To the extent that any administrative body or court denies refunds of overcollections in a proceeding where recovery has been hampered by a lack of cooperation from a utility, today's rate increases shall also be subject to refund."

Replaced with:

"4. To the extent that generators and sellers make refunds for overcollections, those refunds shall either be passed through ratepayers, or applied to future power purchase costs or other purposes as authorized by the Commission for the purpose of securing each utility's reasonable financial health. To the extent that any administrative body or court denies refunds of overcollections in a proceeding where recovery has been hampered by a lack of cooperation from a utility, today's rate increases shall also be subject to refund."

(END OF ATTACHMENT A)